

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

IN RE: MARSHALL AND BRENDA BIVENS  
Debtors

CASE NO. 08-31447  
Chapter 13  
Judge Humphrey

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**AMENDED CHAPTER 13 PLAN AND NOTICE**  
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The debtor(s) hereby move the Court for an Order to modify the Chapter 13 Plan. Support for the motion is set forth in the following memorandum.

**MEMORANDUM IN SUPPORT**

A plan \_\_\_\_\_ has   x   has not been confirmed.

Date Petition Filed:   3/28/08   Date of Last Modification: \_\_\_\_\_

Date Plan Confirmed: \_\_\_\_\_ Date Last Modification Confirmed: \_\_\_\_\_

Monthly Plan Payments: Current:   \$1517.00   Proposed:   \$1517.00  

If the plan changes the monthly payments, amended Schedules I & J are attached.

Percent to Unsecured Creditors: Current:   35%  

Proposed:   35%  

Length of Plan (months): Current:   60   Proposed:   60  

Proposed Effective Date:   6/30/2008   (Cannot be retroactive)

If the modification reduces the plan to less than 100% to the general unsecured creditors,

Attached is an appraisal of any real estate in which the debtor has an interest, or,

\_\_\_\_\_The Trustee arrange for appraisal

Reason for the modification, including any changes in circumstances since last plan:

1. The debtor owns real estate located at **119 S. Miami Ave. Miamisburg, OH 45342**. The property is valued at **\$42,000.00**. There is a first mortgage on the property held by **Select Portfolio Servicing** 3815 S. West Temple Salt Lake City UT 84115-0000. The payoff on the first mortgage is **\$49,000.00**.

There is no arrearage on this mortgage. There is a second mortgage on this property held by **M&I Bank FSB, P.O. Box 3201, Milwaukee WI 53201-3201**. The balance on the second mortgage is **\$32,787.74**. **M&I Bank FSB** is to be paid as a Class five creditor with zero interest. There is no equity in the property to support paying the debt to **M&I Bank FSB** as a secured creditor. Debtors will object to any claim of **M&I Bank FSB** on this property that is filed as a secured creditor. Debtors will file an adversary complaint to strip this mortgage from the property and have the mortgage cancelled of record. Upon completion of the debtor's Chapter 13 plan the debt to **M&I Bank FSB** will be discharged and the mortgage will be cancelled of record.

2. Select Portfolio Servicing, 3815 S. West Temple, Salt Lake City, Utah 84115 holds a lien against the real estate located at 119 S Miami Ave., Miamisburg, Ohio 45342, in the amount of \$49,000.00. The lien is a balloon note that was due and owing January, 2008. Select Portfolio continued to take automatic payments from the Debtors' checking account and has not sought foreclosure. Therefore, the trustee will treat the creditor as a class 2 claim. The lien will be paid in full at the completion of the plan and shall be release at that time.

Debtor's attorney will make separate application for additional attorney fees as provided by LBR 2016-1.

Respectfully submitted,

/s/ Wayne P. Novick  
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/s/ Marshall Bivens  
MARSHALL BIVENS  
Debtor

/s/ Brenda Bivens  
BRENDA BIVENS  
Debtor

CASE NO. 08-31447

CERTIFICATE OF SERVICE WITH TWENTY DAY NOTICE

All parties are hereby placed on notice that an objection to this modification of plan must be filed within twenty (20) days of the date set forth on the Certificate of Service or an order will be submitted to the court confirming this modification of plan. If a response objecting to this motion for modification is timely filed, then this matter shall be set for hearing before the court on the 1st day of July, 2008 at 1:30 p.m. In the East Courtroom, United States Bankruptcy Court, 120 W. Third St., Dayton, OH 45402.

A copy hereof was served by ECF on the 22nd day of May, 2008 upon the U.S. Trustee and Jeffrey M. Kellner, Chapter 13 Trustee and by ordinary U.S. Mail upon the attached list of creditors and Marshall and Brenda Bivens, 119 S. Miami Avenue, Miamisburg, Ohio 45342.

SERVED BY /s/ Wayne P. Novick